IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6486 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DASHRATHBHAI @ BACHUBHAI BABUBHAI DESAI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6486 of 2002

MS NIRALI B MUNSHI for Petitioner No. 1

MR H H PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/08/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad city

dated 9.1.2002 in exercise of powers vested in him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

It is settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Preventionof Anti-social Activities Act, 1985 (for short "the Act of 1985'), there should be satisacotory materials to indicate that such person is habitual of committing or attempting to comit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterized as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides, a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M.J. Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268.

I have heard learned counsel Ms. Nirali Munshi for the petitioner and also perused the material on record. According to learned advocatefor the petitioner, the detaining authority has passed the impugned detention order relying upon seven offences registered against the petitioner under Indian Penal Code and statements of two independent witnesses. She has further argued that there is no name of the petitioner in any of the FIRs. She has further submitted that all the offences alleged to have been committed by the petitioner, are punishable under Sec. 379 of Indian Penal Code, for theft of vehicle and in such cases, detention order against the petitioner could not have been passed, as there is no breachof public order but a question may be of law and order. She has further argued that the detaining authority without verifying the statements of the witnesses regarding highheadedness of the petitioner and for fear expressed by the witnesses, has illegally not disclosed the names and addresses of the witnesses, and thereby the detaining authority has prevented the petitioner from making an effective representation.

The learned counsel for the petitioner has further submitted that the respondents have not filed affidavit justifying the grounds of detention. It has been observed in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs.

Police Commissioner, Surat and Ors., reported in 2000(1) GLH 393, that:

> "Before parting with the matter, we may observe that recently, we have come accross few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever ana orderof detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by anofficer or authority other than the detaining authority."

Irrespective of absence of affidavit, the order under challenge is not found satisfactory. It is rightly submitted that for the sake of argument, if it is accepted that the petitioner was found involved in 4 criminal cases mentioned in the table with grounds for detention served to the detenu, than each case can be said to be criminal wrong adverse to the law and order or violation of rule of law, and not public order. In all the three cases, it is the allegation that the petitioner was found involved in lifting two wheeelers parked in the open place. In one case, in the month of December, 2001 he was found involved in taking away the Maturi Esteem Car worth Rs. 6,04,000/. It is pertinent to note that initially he was arrested on 3.1.2002 by Ellisbridge Police Station and, thereafter he was arrested for the rest of two offences registered with Vejalpur and Naroda Police Station. The offence registered with Naroda Police Station is dated 3.1.2002. It is not clear that at what point of time, the petitioner was arrested by the Ellisbridge Police Station. The registration of offence registered by the Vejalpur Police Station seems to be later in point of time. So, without going into other details, at least it can be inferred that the alleged offence cannot be equated with the activitiy which would disrupt the maintenance of public order and even tempo of life. In the present case, the detaining authority ought not to have branded the petitioner as dangerous person within the meaning of sec. 2(c) of the PASA Act. I am informed by the learned counsel for the petitioner Ms. Nirali Munshi that the co-accused-cum-co-detenu Arvindbhai Jagdish Chandrabhan (Vankar) has been set at liberty by this Court vide decision dated 1.3.2002. It is true that he has been set at liberty by this Court on a different ground i.e. want of filing of affidavit by

the respondents, but for the sake of argument, if the affidavit would have been filed in that matter, than in view of the ratio of the decision of Ashokbhai Jivraj Jivabhai Solanki (supra) (para 22) the order of detention could have been quashed by this Court. There are catena of decisions propounding or reiterating the similar principle. So, this petition shall have to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 9.1.2002 passed by Police Commissioner, Ahmedabad city is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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